

In the Matter of the Application of:

**RODOLFO SILVA**

Applicant.

The attached Stipulation for a Probationary License is hereby accepted and adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **October 30, 2017**, although the probation will not commence until the applicant completes any remaining requirements for licensure and the license is issued.

**ORDERED:** October 23, 2017

MEDICAL BOARD OF CALIFORNIA

By: Michelle Anne Bholat MP  
Michelle Anne Bholat, M.D., Chair  
Panel B

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Application of:	)	Case No. 800-2017-036113
	)	
RODOLFO SILVA	)	
	)	STIPULATION FOR A
	)	PROBATIONARY LICENSE
For a Physician's and Surgeon's License	)	
_____	)	

- 1) Rodolfo Silva, applicant for a physician's and surgeon's license (hereinafter "applicant"), and Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), hereby stipulate as follows:
- 2) Applicant is eligible for medical licensure in California upon meeting all licensure requirements.
- 3) On April 11, 2016, applicant submitted an application for a Physician's and Surgeon's License in the State of California. Applicant disclosed he has a criminal record history. On April 13, 2016, applicant was arrested for Driving Under the Influence of Alcohol. On February 10, 2017, applicant was convicted of California Vehicle Code Section 23152(B), Driving Under the Influence (DUI) of Alcohol by the Superior Court of California County of Riverside. Applicant was placed on thirty-six (36) months' probation, ordered to complete a First Offender Driving Program, and fined.
- 4) Section 480(a) of the Business and Professions Code states the Board may deny a license on the grounds that the applicant has one of the following: been convicted of a crime; done any act that would be grounds for suspension or revocation of a license; or done a crime or act that is substantially related to the qualifications, functions, or duties of the business and profession for which application is made. Section 2234 of the Business and Professions Code states that the Board may take action for unprofessional conduct. Section 2239 of the Business and Professions Code states that the use or prescribing for or administering to oneself, of any alcohol beverages to the extent that it is dangerous or injurious, or to the extent that it impairs the ability to practice medicine safely is unprofessional conduct.  
  
The above supports a conclusion that grounds exist for denial pursuant to sections 480(a)(1), 480(a)(3)(A), 480(a)(3)(B), 2234, 2236 and 2239(a) of the Business and Professions Code.
- 5) Under Section 2221 of the Business and Professions Code, the Board may deny a license to an applicant because of unprofessional conduct. Alternatively, the Board has the discretionary authority to issue a probationary license with terms and conditions.

6) Applicant acknowledges he has a right to request a Statement of Issues and a hearing upon denial of license for cause. Applicant waives notice of hearing and judicial review in favor of this Stipulation for a Probationary License, which is subject to approval by the Board. If not approved, this Stipulation is null and void and may not be used for any purpose.

7) Applicant understands and agrees that counsel for the staff of the Board may communicate directly with the Board regarding this proposed Stipulation, without notice to or participation by applicant or his counsel. By signing the Stipulation, applicant understands and agrees that he may not withdraw this agreement or seek to rescind the Stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this Stipulation, the offer of a Stipulation for a Probationary License shall be of no force or effect; except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

#### ORDER

IT IS ORDERED THAT RODOLFO SILVA, applicant, be issued a Physician's and Surgeon's License on a probationary basis, subject to the following terms and conditions:

1) Applicant is placed on probation for a period of five (5) years. Probation shall begin on the date the applicant is issued a probationary license.

2) Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this Decision, applicant shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Applicant shall also provide specific, written consent for the Board, applicant's worksite monitor, and applicant's employers and supervisors to communicate regarding applicant's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the applicant has medical staff privileges.

3) Biological Fluid Testing

Applicant shall immediately submit to biological fluid testing, at applicant's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Applicant shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Applicant shall be tested on the date of the notification as directed by the Board or its designee. The Board may order an applicant to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the applicant.

During the first year of probation, applicant shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, applicant shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, applicant shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.<sup>15</sup>
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test applicant on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the applicant to check in daily for testing.

- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
- (m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the applicant holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Applicant shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and applicant.

If a biological fluid test result indicates applicant has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order applicant to cease practice and instruct applicant to leave any place of work where applicant is practicing medicine or providing medical services. The Board shall immediately notify all of applicant's employers, supervisors and work monitors, if any, that applicant may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of an applicant's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by applicant and approved by the Board, alcohol, or any other substance

the applicant has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, applicant has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance applicant's rehabilitation.

In consideration of applicant's fulfillment of criteria set forth by Code of Regulations, title 16, section 1361.5(3)(I)(1) (Previous Testing Orders/Sobriety) and 1361.5(c)(3)(I)(2) (Violation(s) Outside of Employment), applicant is permitted to bypass the first-year testing frequency requirements set forth above. Accordingly, the second-year testing frequency requirements will apply upon applicant's commencement of probation.

4) Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, applicant shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Applicant shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Applicant shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with applicant within the last five (5) years. Applicant's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing applicant's name, the group name, the date and location of the meeting, applicant's attendance, and applicant's level of participation and progress. The facilitator shall report any unexcused absence by applicant from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

5) Worksite Monitor for Substance-Abusing Licensee

Within thirty (30) calendar days of the effective date of this Decision, applicant shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the applicant at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with applicant, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee.

If it is impractical for anyone but applicant's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall applicant's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of applicant's disciplinary order and agrees to monitor applicant as set forth by the Board or its designee.

Applicant shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with applicant in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding applicant's behavior, if requested by the Board or its designee; and review applicant's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and applicant's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; applicant's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) applicant's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates applicant had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of applicant's work attendance; (8) any change in applicant's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by applicant. Applicant shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, applicant shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If applicant fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, applicant shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Applicant shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

6) Controlled Substances – Abstain From Use

Applicant shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to applicant by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, applicant shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength; and quantity; and issuing pharmacy name, address, and telephone number.

If applicant has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, applicant shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The applicant shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the applicant requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the applicant with a hearing within 30 days of the request, unless the applicant stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide applicant with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

7) Alcohol – Abstain From Use

Applicant shall abstain completely from the use of products or beverages containing alcohol.

If applicant has a confirmed positive biological fluid test for alcohol, applicant shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The applicant shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the applicant requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the applicant with a hearing within 30 days of the request, unless the applicant stipulates to a later hearing.



If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide applicant with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

8) Notification

Within seven (7) days of the effective date of this Decision, the applicant shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to applicant, at any other facility where applicant engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to applicant. Applicant shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

9) Supervision of Physician Assistants and Advanced Practice Nurses

During probation, applicant is prohibited from supervising physician assistants and advanced practice nurses.

10) Obey All Laws

Applicant shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

11) Quarterly Declarations

Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Applicant shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12) General Probation Requirements

Compliance with Probation Unit

Applicant shall comply with the Board's probation.

Address Changes

Applicant shall, at all times, keep the Board informed of applicant's business and residence

addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

#### Place of Practice

Applicant shall not engage in the practice of medicine in applicant's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

#### License Renewal

Applicant shall maintain a current and renewed California physician's and surgeon's license.

#### Travel or Residence Outside California

Applicant shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event applicant should leave the State of California to reside or to practice applicant shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

#### 13) Interview with the Board or its Designee

Applicant shall be available in person upon request for interviews either at applicant's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

#### 14) Non-practice While on Probation

Applicant shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of applicant's return to practice. Non-practice is defined as any period of time applicant is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If applicant resides in California and is considered to be in non-practice, applicant shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve applicant from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event applicant's period of non-practice while on probation exceeds 18 calendar months, applicant shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the

Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Applicant's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for an applicant residing outside of California, will relieve applicant of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

15) Completion of Probation

Applicant shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, applicant's certificate shall be fully restored.

16) Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If applicant violates probation in any respect, the Board, after giving applicant notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against applicant during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17) License Surrender

Following the effective date of this Decision, if applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, applicant may request to surrender his license. The Board reserves the right to evaluate applicant's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances.

Upon formal acceptance of the surrender, applicant shall within 15 calendar days deliver applicant's wallet and wall certificate to the Board or its designee and applicant shall no longer practice medicine. Applicant will no longer be subject to the terms and conditions of probation. If applicant re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.


18) Probation Monitoring Costs

Applicant shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

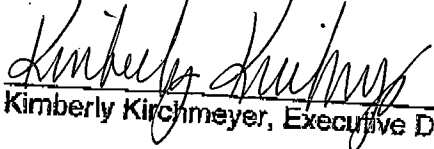
Rodolfo Silva

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Applicant agrees to comply with the terms and conditions of the above Order.

  
Rodolfo Silva, Applicant

9/12/17  
Date

  
Kimberly Kirchmeyer, Executive Director

9/29/17  
Date